

ORIGINAL

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 1 2 56 PM '93

CC Docket No. 92-145

DISPATCHED BY

In the Matter of

Elimination of Part 34, Uniform System of Accounts for Radiotelegraph Carriers, and Part 35, Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers, of the Commission's Rules and Regulations, and Elimination of Annual Reports Form R, for Radiotelegraph Carriers, and Form O, for Wire-Telegraph and Ocean-Cable Carriers and Amendment of Part 1 and Part 43 of the Commission's Rules.

REPORT AND ORDER

Adopted: June 2, 1993;

Released: June 29, 1993

By the Commission:

I. INTRODUCTION

1. On July 16, 1992, the Commission released a *Notice of Proposed Rulemaking* (NPRM),¹ in which it proposed to eliminate Part 34 and Part 35 of the Commission's rules² and the related Annual Reports Form O and Form R. We proposed these eliminations because these accounting rules and Annual Reports have limited value to the Commission. In addition, the NPRM proposed to amend Part 43 of the Commission's rules to require radiotelegraph, wire-telegraph, and ocean-cable carriers (record carriers) with annual revenues over \$100 million to file a letter each year with the Commission specifying its operating revenues and the net book value of its communications plant. Comments in support of our proposals were filed by TRT/FTC Communications, Inc., d.b.a. TRT Communications, Inc. (TRT); Western Union International, Inc. (WUI); and New Valley Corporation (New Valley), formerly Western Union Cor-

poration. No replies were filed. For the reasons discussed in the succeeding paragraphs, we adopt our proposals with some modifications.

II. BACKGROUND

2. Record carriers having average annual revenues exceeding \$50,000 are subject to the accounting requirements of Parts 34 or 35 and report their financial and statistical data and certain ownership information on Annual Reports O or R, as appropriate for the services provided. The reports are filed in accordance with Section 1.785, Annual financial reports, and Section 43.21, Annual reports of carriers and certain affiliates, of our rules. They contain information on ownership, officers and directors, debt, property and equipment, franchises, and financial operations of the reporting companies.

3. In 1981, Congress amended Section 222 of the Communications Act.³ The Commission was required, wherever feasible, to promote the development of fully competitive domestic and international markets in the provision of record communications services. This was required to enable the public to obtain record communications services and facilities, including terminal equipment, at a competitive price. The Commission was ordered to forbear from exercising its authority under this Act as the development of competition among record carriers reduces the degree of regulation necessary to protect the public.⁴ Pursuant to this mandate, the Commission, in 1983, classified all domestic record carriers as nondominant and placed them under streamlined regulation.⁵ In 1985, the Commission adopted the nondominant classification and streamlined regulation for the international record carriers.⁶

III. DISCUSSION

A. Elimination of Part 34 and Part 35 and Annual Reports Form O and Form R

4. In the NPRM, the Commission proposed to eliminate Part 34, Uniform System of Accounts for Radiotelegraph Carriers, and Part 35, Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers. It also proposed to eliminate Annual Report Form O for wire-telegraph and ocean-cable carriers, and Annual Report Form R for radiotelegraph carriers. Finally, we proposed to eliminate Section 1.793. Reports and requests to be filed under Part 34 of this chapter, and Section 1.794. Reports and requests to be filed under Part 35 of this chapter.

5. All three commenting parties support and reaffirm the Commission's justifications for its proposals, namely that (1) record communications services have long been pro-

¹ Elimination of Part 34, Uniform System of Accounts for Radiotelegraph Carriers, and Part 35, Uniform System of Accounts for Wire-Telegraph and Ocean-Cable Carriers, of the Commission's Rules and Regulations, and Elimination of Annual Reports Form R, for Radiotelegraph Carriers, and Form O, for Wire-telegraph and Ocean-Cable Carriers and Amendment of Part 1 and Part 43, CC Docket 92-145, 7 FCC Rcd 4481 (1992).

² 47 C.F.R. §§34.01-1 to 34.1-6-1; 47 C.F.R. §§35.01-1 to 35.1-6-1.

³ 47 U.S.C. §222.

⁴ 47 U.S.C. §222(b)(1) (1981). The current §222 was part of the

Record Carrier Competition Act of 1981 (RCCA), Public Law 97-130, 95 Stat. 1687-90, December 29, 1981.

⁵ See Policy and Rules Concerning Rates for Competitive Common Carriers Services and Facilities Authorizations Therefor, *Fourth Report and Order*, 95 FCC 2d 554 (1983), *vacated on other grounds*, AT&T v. FCC, No. 92-1053 (D.C. Cir. Nov. 13, 1992); see generally Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873 (1989) (affirming nondominant status of domestic carriers other than AT&T and local exchange carriers).

⁶ See International Competitive Carrier Policies, 102 FCC 2d 812 (1985).

vided in a fully competitive environment and the rates for these services have not been subject to rate of return regulation by the Commission for a number of years; (2) the prescription of a system of accounts and annual financial reports for record carriers no longer fulfills any regulatory purpose; (3) the maintenance of the current regulations places a tremendous burden on the record carriers; and (4) the existing systems of accounts in Parts 34 and 35 are substantially out of date and are in some instances inconsistent with generally accepted accounting principles (GAAP).⁷ TRT states that if the Commission were to retain prescribed accounting for record carriers, it would be obligated to revise substantially the present system of accounts, an effort that would be wasteful of Commission resources because there is no longer any need for prescribed accounting for competitive, non-dominant record carriers.⁸ New Valley states that the burdens imposed by these reporting requirements on the record carriers, as well as on the Commission, cannot be justified given the absence of any benefits derived from the reports and accounting requirements, the need to enhance U.S. industrial competitiveness, and federal budgetary constraints.⁹

6. In recognition of our reduced need for uniform accounting and detailed reporting by record carriers, we (1) eliminate Parts 34 and 35; (2) revise Section 1.785 as it applies to record carriers; and (3) eliminate Sections 1.793 and 1.794.

B. Amendment of Section 43.21, Annual Reports of Carriers and Certain Affiliates

7. In the NPRM, we also proposed to amend Section 43.21 to require record carriers with annual revenues over \$100 million to file a letter each year with the Commission detailing their operating revenues and net book value of their communications plant. The commenting parties have no objection to filing such letters. New Valley states that this reduction of the reporting requirements, as proposed by the Commission, is clearly consistent with Congress's mandate that the Commission forbear from exercising its authority over record carriers.¹⁰

8. Recent developments in the international record carrier segment of the industry, and recent annual reporting revenue data, however, have persuaded us to modify our proposed amendments to Section 43.21. We will require record carriers with annual operating revenue over \$75 million, rather than \$100 million as proposed in the NPRM, to file the annual letter with the Commission. We also modify the requirements of the annual letter to include some disaggregation of revenue by service category, instead of total operating revenue. Data available at the Commission,¹¹ show a trend toward a smaller number of

carriers providing international record services and an increase in the concentration of carriers in the record service submarkets, since we issued our International Competitive Carrier decision in 1985. In contrast to the seven carriers that provided record services in 1985, recent information indicates that apparently three carriers now provide exchange telex and message telegraph service. We believe that changing conditions require us to collect data that will enable us to track operating results of the record carriers. Setting the revenue requirement threshold at \$75 million insures we receive information from the major record carriers. Some additional information beyond our initial proposal will enable us to monitor developments in the international communications industry and the record carrier segment of the industry, while still substantially reducing the reporting burden on record carriers. We have attached a one-page income statement and balance sheet, which encompasses the information necessary for our regulatory oversight.

9. This action is consistent with recent decisions by the Common Carrier Bureau which, in the recognition of the reduced need for the data in Forms O and R, has granted waivers to these carriers for the last three years and substantially reduced the amount of information to be filed.¹² Therefore, we require that each record carrier with annual revenues over \$75 million file an annual letter which includes the information on the attached income statement and balance sheet. The amendments to Part 1 and Part 43 are contained in Appendix A,¹³ and the income statement and balance sheet are in Appendix B.

10. The elimination of the accounting rules contained in Part 34 and Part 35 and the Annual Reports O and R does not preclude us from directing the affected carriers to file more detailed information at a later date should we subsequently determine that additional information is needed. Section 219(b) of the Act states that the Commission may require carriers subject to the Act to file periodical and/or special reports concerning any matters with respect to which the Commission is authorized or required by law to act. Thus, we are authorized to require filing of additional data as needed.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to authority contained in Sections 4, 219, 220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Secs. 154, 219, 220, and 303, Parts 1 and Part 43 ARE AMENDED as set forth in Appendix A below, effective 90 days after publication in the Federal Register.

⁷ TRT Comments at 2, WUI Comments at 2, and New Valley Comments at 2.

⁸ TRT at 2.

⁹ *Id.* at 2.

¹⁰ New Valley Comments at 1-2.

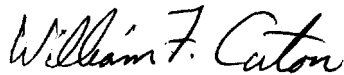
¹¹ See, e.g., "Trends in the International Communications Industry, 1975-1990", Common Carrier Bureau, Industry Analysis Division, December 31, 1991, and "Statistics of Communications Common Carriers", (1991/1992 Edition), Federal Communications Commission.

¹² Waiver of Certain Reporting Requirements of Annual Reports Form O and Form R, 5 FCC Rcd 2563 (1990) (1989 filings); 6 FCC Rcd 50 (1990) (1990 and 1991 filings).

¹³ See Appendix. The text given in the Appendix for §43.21 also incorporates several changes that were adopted in previous rulemaking proceedings but were never reflected in the text of the rule as printed in the Code of Federal Regulations. See Annual Report of Licensees in Public Mobile Radio Services (FCC Form L), 47 F.R. 50694 (Nov. 9, 1982) (eliminating annual reporting requirement for Domestic Public Land Mobile Radio Services licensees); Elimination of Annual Report of Miscellaneous Common Carriers (Form P), 49 F.R. 10121 (March 19, 1984) (eliminating annual reporting requirement for licensees in the Domestic Public Point-to-Point Microwave Service who are miscellaneous common carriers).

12. IT IS FURTHER ORDERED, that Part 34 and Part 35 of the Commission's rules and the related Annual Reports Form O and Form R will be eliminated ninety days from the date a summary of this Order is published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

APPENDIX A

47 CFR. Parts 1, 34, 35, and 43 are amended as follows:

Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.785 (a) is revised to read as follows:

§1.785 Annual financial reports.

(a) An annual financial report shall be filed by telephone carriers and affiliates as required by Part 43 of this chapter on Form M.

3. Sections 1.793 and 1.794 are removed.

4. Part 34 is removed in its entirety.

5. Part 35 is removed in its entirety.

Part 43 - Reports of Communications Common Carriers and Certain Affiliates

6. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

7. Paragraphs (a) and (d) of Section 43.21 are revised to read as follows:

§43.21 Annual reports of carriers and certain affiliates.

(a) Communication common carriers having annual operating revenues in excess of \$100 million, and certain companies (as indicated in paragraph (c) of this section) directly or indirectly controlling such carriers shall file with the Commission annual reports or an annual letter as provided in this section. Except as provided in paragraphs (c), (e) and (f) of this section, each annual report required by this section shall be filed not later than March 31 of each year, covering the preceding calendar year. It shall be filed on the appropriate report form prescribed by the Commission (see §1.785 of this chapter) and shall contain full and specific answers to all questions propounded and

information requested in the currently effective report forms. The number of copies to be filed shall be specified in the applicable report form. At least one copy of the report shall be signed on the signature page by the responsible accounting officer. A copy of each annual report shall be as retained in the principal office of the respondent and shall be filed in such manner to be readily available for reference and inspection.

(d) Each miscellaneous common carrier (as defined by §21.1 of this chapter) with operating revenues over \$100 million for a calendar year shall file with the Common Carrier Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. Each record carrier with operating revenues over \$75 million for a calendar year shall file a letter showing selected income statement and balance sheet items for that year with the Common Carrier Bureau Chief. These letters must be filed by March 31 of the following year.

Appendix B

Income Statement
For the 12 months ending December 31, 19XX

Revenues:

Exchange Telex Services	\$	
Message Telegraph Services		
Private Line Services		
Other Revenues		
Total Revenues	\$	

Expenses:

Operating Expenses	\$	
Depreciation and Amortization		
Taxes other than Income Taxes		
Interest Expense		
Other Income and Expenses, net		
Income Taxes		
Total Expenses		
Income before Extraordinary Items		
Extraordinary Items (Net of Tax of \$ _____)		
Net Income	\$	

Balance Sheet
As of December 31, 19XX

Assets:

Current Assets	\$	
Investments and Funds		
Property, Plant and Equipment		
Less Accumulated Depreciation		
Net Property, Plant and Equipment		
Other Assets and Deferred Charges		
Total Assets	\$	

Liabilities and Owners' Equity:

Current Liabilities	\$	
Long Term Debt		
Deferred Credits		
Total Liabilities		
Owners' Equity		
Total Liabilities and Owners' Equity	\$	